

Senate Bill No. 177—Senators Settlemeyer, Hardy; Cegavske, Goicoechea, Gustavson, Hammond, Hutchison, Jones, Kieckhefer, Segerblom and Woodhouse

Joint Sponsor: Assemblyman Wheeler

CHAPTER.....

AN ACT relating to tobacco; authorizing a board of county commissioners to adopt an ordinance prohibiting a minor from committing certain acts relating to the possession and use of tobacco products; revising various provisions relating to tobacco products; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 17 of this bill authorizes a board of county commissioners to adopt an ordinance which prohibits a minor from purchasing or attempting to purchase tobacco products, possessing or attempting to possess tobacco products, using tobacco products or falsely representing his or her age to purchase, possess or obtain tobacco products. **Section 4** of this bill provides that a child may be issued a citation for violating the ordinance. Under **section 4**, a citation for a violation of the ordinance may be issued to a child who is the occupant of a vehicle only if the vehicle is halted or its driver arrested for another offense. **Section 3** of this bill provides that a probation officer may act as a master of the juvenile court if the proceeding involves such a citation. Under **sections 3.3, 3.7 and 17** of this bill, a child who violates the ordinance is a child in need of supervision for the purposes of juvenile court proceedings rather than a delinquent child.

Section 5 of this bill sets forth the possible penalties if a child is adjudicated to be in need of supervision because the child has committed a violation of the ordinance. Under **section 5**, the juvenile court may order a child to pay a \$25 fine for a first adjudication, a \$50 fine for a second adjudication and a \$75 fine for a third or any subsequent adjudication. If the juvenile court orders a child to pay such a fine, **section 5** requires the juvenile court to order the child to pay a \$10 administrative assessment in addition to the fine. **Section 5** further provides that: (1) for any adjudication that a child is in need of supervision because the child committed a violation of the ordinance, the juvenile court may order a child to attend a tobacco awareness and cessation program; and (2) for a third or any subsequent adjudication or for a willful failure by the child to pay a fine or administrative assessment, the juvenile court may order a suspension or delay in the issuance of the child's driver's license for at least 30 days but not more than 90 days. Under **section 5**, if the juvenile court orders the suspension or delay in the issuance of a child's driver's license, the juvenile court may order the Department of Motor Vehicles to issue to the child a restricted driver's license that authorizes the child to drive to and from school or work or to acquire medicine or food for himself or herself or for an immediate family member.

Existing law prohibits various acts related to tobacco or products made from tobacco. (NRS 202.2485-202.2497) **Sections 11-16** of this bill revise these prohibitions to include tobacco or products made or derived from tobacco, and define the term "products made or derived from tobacco."



EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 62A of NRS is hereby amended by adding thereto a new section to read as follows:

“Offense related to tobacco” means a violation of an ordinance adopted by a board of county commissioners pursuant to section 17 of this act.

Sec. 2. NRS 62A.010 is hereby amended to read as follows:

62A.010 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 62A.020 to 62A.350, inclusive, ***and section 1 of this act*** have the meanings ascribed to them in those sections.

Sec. 3. NRS 62B.020 is hereby amended to read as follows:

62B.020 1. Except as otherwise provided in this section, the juvenile court or the chief judge of the judicial district may appoint any person to act as a master of the juvenile court if the person is qualified by previous experience, training and demonstrated interest in the welfare of children to act as a master of the juvenile court.

2. A probation officer shall not act as a master of the juvenile court unless the proceeding concerns:

(a) A minor traffic offense; ~~for~~

(b) ***An offense related to tobacco; or***

(c) A child who is alleged to be a habitual truant.

3. If a person is appointed to act as a master of the juvenile court, the person shall attend instruction at the National College of Juvenile and Family Law in Reno, Nevada, in a course designed for the training of new judges of the juvenile court on the first occasion when such instruction is offered after the person is appointed.

4. If, for any reason, a master of the juvenile court is unable to act, the juvenile court or the chief judge of the judicial district may appoint another qualified person to act temporarily as a master of the juvenile court during the period that the master who is regularly appointed is unable to act.

5. The compensation of a master of the juvenile court:

(a) May not be taxed against the parties.

(b) Must be paid out of appropriations made for the expenses of the district court, if the compensation is fixed by the juvenile court.

Sec. 3.3. NRS 62B.320 is hereby amended to read as follows:

62B.320 1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction in proceedings



concerning any child living or found within the county who is alleged or adjudicated to be in need of supervision because the child:

(a) Is subject to compulsory school attendance and is a habitual truant from school;

(b) Habitually disobeys the reasonable and lawful demands of the parent or guardian of the child and is unmanageable;

(c) Deserts, abandons or runs away from the home or usual place of abode of the child and is in need of care or rehabilitation;
~~or~~

(d) Uses an electronic communication device to transmit or distribute a sexual image of himself or herself to another person or to possess a sexual image in violation of NRS 200.737 ~~or~~; *or*

(e) Commits an offense related to tobacco.

2. A child who is subject to the jurisdiction of the juvenile court pursuant to this section must not be considered a delinquent child.

3. As used in this section:

(a) "Electronic communication device" has the meaning ascribed to it in NRS 200.737.

(b) "Sexual image" has the meaning ascribed to it in NRS 200.737.

Sec. 3.7. NRS 62B.330 is hereby amended to read as follows:

62B.330 1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.

2. For the purposes of this section, a child commits a delinquent act if the child:

(a) Violates a county or municipal ordinance ~~or~~ *other than an offense related to tobacco;*

(b) Violates any rule or regulation having the force of law; or

(c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada.

3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act:

(a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense.

(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any



other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and

(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(c) An offense or attempted offense involving the use or threatened use of a firearm and any other related offense arising out of the same facts as the offense or attempted offense involving the use or threatened use of a firearm, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the offense or attempted offense involving the use or threatened use of a firearm was committed; and

(2) Before the offense or attempted offense involving the use or threatened use of a firearm was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(d) A felony resulting in death or substantial bodily harm to the victim and any other related offense arising out of the same facts as the felony, regardless of the nature of the related offense, if:

(1) The felony was committed on the property of a public or private school when pupils or employees of the school were present or may have been present, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties; and

(2) The person intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person.

(e) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:

(1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or

(2) The person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.



(f) Any other offense if, before the offense was committed, the person previously had been convicted of a criminal offense.

Sec. 4. Chapter 62C of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a child is stopped or otherwise detained by a peace officer for an offense related to tobacco, the peace officer may prepare and issue a citation in the same manner in which a traffic citation is prepared and issued pursuant to NRS 62C.070.

2. If a child who is issued a citation for an offense related to tobacco executes a written promise to appear in court by signing the citation, the peace officer:

(a) Shall deliver a copy of the citation to the child; and

(b) Shall not take the child into physical custody for the violation.

3. A citation for an offense related to tobacco may be issued to a child who is an occupant of a vehicle pursuant to this section only if the violation is discovered when the vehicle is halted or its driver is arrested for another alleged violation or offense.

Sec. 5. Chapter 62E of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a child is adjudicated to be in need of supervision because the child has committed an offense related to tobacco, the juvenile court may:

(a) The first time the child is adjudicated to be in need of supervision because the child has committed an offense related to tobacco, order the child to:

(1) Pay a fine of \$25; and

(2) Attend and complete a tobacco awareness and cessation program.

(b) The second time the child is adjudicated to be in need of supervision because the child has committed an offense related to tobacco, order the child to:

(1) Pay a fine of \$50; and

(2) Attend and complete a tobacco awareness and cessation program.

(c) The third or any subsequent time the child is adjudicated to be in need of supervision because the child has committed an offense related to tobacco, order:

(1) The child to pay a fine of \$75;

(2) The child to attend and complete a tobacco awareness and cessation program; and

(3) That the driver's license of the child be suspended for at least 30 days but not more than 90 days or, if the child does not



possess a driver's license, prohibit the child from receiving a driver's license for at least 30 days but not more than 90 days:

(I) Immediately following the date of the order, if the child is eligible to receive a driver's license.

(II) After the date the child becomes eligible to apply for a driver's license, if the child is not eligible to receive a license on the date of the order.

2. If the juvenile court orders a child to attend and complete a tobacco awareness and cessation program, the juvenile court may order the child or the parent or guardian of the child, or both, to pay the reasonable cost for the child to attend the program.

3. If the juvenile court orders a child to pay a fine pursuant to this section, the juvenile court shall order the child to pay an administrative assessment pursuant to NRS 62E.270.

4. If the juvenile court orders a child to pay a fine and administrative assessment pursuant to this section and the child willfully fails to pay the fine or administrative assessment, the juvenile court may order that the driver's license of the child be suspended for at least 30 days but not more than 90 days or, if the child does not possess a driver's license, prohibit the child from receiving a driver's license for at least 30 days but not more than 90 days:

(a) Immediately following the date of the order, if the child is eligible to receive a driver's license.

(b) After the date the child becomes eligible to apply for a driver's license, if the child is not eligible to receive a license on the date of the order.

↪ If the child is already the subject of a court order suspending or delaying the issuance of the driver's license of the child, the juvenile court shall order the additional suspension or delay, as appropriate, to apply consecutively with the previous order.

5. If the juvenile court suspends the driver's license of a child pursuant to this section, the juvenile court may order the Department of Motor Vehicles to issue a restricted driver's license pursuant to NRS 483.490 permitting the child to drive a motor vehicle:

(a) To and from work or in the course of his or her work, or both;

(b) To and from school; or

(c) To acquire supplies of medicine or food or receive regularly scheduled medical care for himself, herself or a member of his or her immediate family.



Sec. 6. NRS 62E.270 is hereby amended to read as follows:
62E.270 1. If the juvenile court imposes a fine against:

- (a) A delinquent child pursuant to NRS 62E.730;
 - (b) A child who has committed a minor traffic offense, except an offense related to metered parking, pursuant to NRS 62E.700; or
 - (c) A child in need of supervision, or the parent or guardian of the child, because the child is a habitual truant pursuant to NRS 62E.430,
- the juvenile court shall order the child or the parent or guardian of the child to pay an administrative assessment of \$10 in addition to the fine.

2. *If, pursuant to section 5 of this act, the juvenile court imposes a fine against a child who has committed an offense related to tobacco, the juvenile court shall order the child to pay an administrative assessment of \$10 in addition to the fine.*

3. The juvenile court shall state separately on its docket the amount of money that the juvenile court collects for the administrative assessment.

~~13-1~~ 4. If the child is found not to have committed the alleged act or the charges are dropped, the juvenile court shall return to the child or the parent or guardian of the child any money deposited with the juvenile court for the administrative assessment.

~~14-1~~ 5. On or before the fifth day of each month for the preceding month, the clerk of the court shall pay to the county treasurer the money the juvenile court collects for administrative assessments.

~~15-1~~ 6. On or before the 15th day of each month, the county treasurer shall deposit the money in the county general fund for credit to a special account for the use of the county's juvenile court or for services to delinquent children.

Sec. 6.5. NRS 62E.400 is hereby amended to read as follows:

62E.400 1. The provisions of this section and NRS 62E.410, 62E.420 and 62E.430 *and section 5 of this act* apply to the disposition of a case involving a child who is found to be within the purview of this title because the child is or is alleged to be in need of supervision.

2. If such a child is found to be within the purview of this title:

- (a) The juvenile court may issue any orders or take any actions set forth in NRS 62E.410, 62E.420 and 62E.430 *and section 5 of this act* that the juvenile court deems proper for the disposition of the case; and



(b) If required by a specific statute, the juvenile court shall issue the appropriate orders or take the appropriate actions set forth in the statute.

Secs. 7-10. (Deleted by amendment.)

Sec. 11. NRS 202.2485 is hereby amended to read as follows:

202.2485 As used in NRS 202.2485 to 202.2497, inclusive:

1. “Distribute” includes furnishing, giving away or providing products made *or derived* from tobacco or samples thereof at no cost to promote the product, whether or not in combination with a sale.

2. “Health authority” means the district health officer in a district, or his or her designee, or, if none, the State Health Officer, or his or her designee.

3. *“Product made or derived from tobacco” does not include any product regulated by the United States Food and Drug Administration pursuant to Chapter V of the Federal Food, Drug, and Cosmetics Act, 21 U.S.C. §§ 351 et seq.*

Sec. 12. NRS 202.249 is hereby amended to read as follows:

202.249 1. It is the public policy of the State of Nevada and the purpose of NRS 202.2491, 202.24915 and 202.2492 to place restrictions on the smoking of tobacco in public places to protect human health and safety.

2. The quality of air is declared to be affected with the public interest and NRS 202.2491, 202.24915 and 202.2492 are enacted in the exercise of the police power of this state to protect the health, peace, safety and general welfare of its people.

3. Health authorities, police officers of cities or towns, sheriffs and their deputies and other peace officers of this state shall, within their respective jurisdictions, enforce the provisions of NRS 202.2491, 202.24915 and 202.2492. Police officers of cities or towns, sheriffs and their deputies and other peace officers of this state shall, within their respective jurisdictions, enforce the provisions of NRS 202.2493, 202.24935 and 202.2494.

4. Except as otherwise provided in subsection 5, an agency, board, commission or political subdivision of this state, including, without limitation, any agency, board, commission or governing body of a local government, shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display or promotion of tobacco or products made *or derived* from tobacco than are provided by NRS 202.2491, 202.24915, 202.2492, 202.2493, 202.24935 and 202.2494.

5. A school district may, with respect to the property, buildings, facilities and vehicles of the school district, impose more stringent restrictions on the smoking, use, sale, distribution,



marketing, display or promotion of tobacco or products made *or derived* from tobacco than are provided by NRS 202.2491, 202.24915, 202.2492, 202.2493, 202.24935 and 202.2494.

Sec. 13. NRS 202.2493 is hereby amended to read as follows:

202.2493 1. A person shall not sell, distribute or offer to sell cigarettes or smokeless products made *or derived* from tobacco in any form other than in an unopened package which originated with the manufacturer and bears any health warning required by federal law. A person who violates this subsection shall be punished by a fine of \$100 and a civil penalty of \$100.

2. Except as otherwise provided in subsections 3, 4 and 5, it is unlawful for any person to sell, distribute or offer to sell cigarettes, cigarette paper, tobacco of any description or products made *or derived* from tobacco to any child under the age of 18 years. A person who violates this subsection shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500.

3. A person shall be deemed to be in compliance with the provisions of subsection 2 if, before the person sells, distributes or offers to sell to another, cigarettes, cigarette paper, tobacco of any description or products made *or derived* from tobacco, the person:

(a) Demands that the other person present a valid driver's license or other written or documentary evidence which shows that the other person is 18 years of age or older;

(b) Is presented a valid driver's license or other written or documentary evidence which shows that the other person is 18 years of age or older; and

(c) Reasonably relies upon the driver's license or written or documentary evidence presented by the other person.

4. The employer of a child who is under 18 years of age may, for the purpose of allowing the child to handle or transport tobacco or products made *or derived* from tobacco in the course of the child's lawful employment, provide tobacco or products made *or derived* from tobacco to the child.

5. With respect to any sale made by an employee of a retail establishment, the owner of the retail establishment shall be deemed to be in compliance with the provisions of subsection 2 if the owner:

(a) Had no actual knowledge of the sale; and

(b) Establishes and carries out a continuing program of training for employees which is reasonably designed to prevent violations of subsection 2.

6. The owner of a retail establishment shall, whenever any product made *or derived* from tobacco is being sold or offered for sale at the establishment, display prominently at the point of sale:



(a) A notice indicating that:

(1) The sale of cigarettes and other tobacco products to minors is prohibited by law; and

(2) The retailer may ask for proof of age to comply with this prohibition; and

(b) At least one sign that complies with the requirements of NRS 442.340.

→ A person who violates this subsection shall be punished by a fine of not more than \$100.

7. It is unlawful for any retailer to sell cigarettes through the use of any type of display:

(a) Which contains cigarettes and is located in any area to which customers are allowed access; and

(b) From which cigarettes are readily accessible to a customer without the assistance of the retailer,

→ except a vending machine used in compliance with NRS 202.2494. A person who violates this subsection shall be punished by a fine of not more than \$500.

8. Any money recovered pursuant to this section as a civil penalty must be deposited in a separate account in the State General Fund to be used for the enforcement of this section and NRS 202.2494.

Sec. 14. NRS 202.24935 is hereby amended to read as follows:

202.24935 1. It is unlawful for a person to knowingly sell or distribute cigarettes, cigarette paper, tobacco of any description or products made *or derived* from tobacco to a child under the age of 18 years through the use of the Internet.

2. A person who violates the provisions of subsection 1 shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500. Any money recovered pursuant to this section as a civil penalty must be deposited in the same manner as money is deposited pursuant to subsection 8 of NRS 202.2493.

3. Every person who sells or distributes cigarettes, cigarette paper, tobacco of any description or products made *or derived* from tobacco through the use of the Internet shall adopt a policy to prevent a child under the age of 18 years from obtaining cigarettes, cigarette paper, tobacco of any description or products made *or derived* from tobacco from the person through the use of the Internet. The policy must include, without limitation, a method for ensuring that the person who delivers such items obtains the signature of a person who is over the age of 18 years when delivering the items, that the packaging or wrapping of the items



when they are shipped is clearly marked with the word “cigarettes” or the words “tobacco products,” and that the person complies with the provisions of 15 U.S.C. § 376. A person who fails to adopt a policy pursuant to this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than \$500.

Sec. 15. NRS 202.2494 is hereby amended to read as follows:

202.2494 1. A cigarette vending machine may be placed in a public area only if persons who are under 21 years of age are prohibited from loitering in that area pursuant to NRS 202.030 or 463.350.

2. A coin-operated vending machine containing cigarettes must not be used to dispense any product not made *or derived* from tobacco.

Sec. 16. NRS 202.2496 is hereby amended to read as follows:

202.2496 1. As necessary to comply with applicable federal law, the Attorney General shall conduct random, unannounced inspections at locations where tobacco and products made *or derived* from tobacco are sold, distributed or offered for sale to inspect for and enforce compliance with NRS 202.2493 and 202.2494. For assistance in conducting any such inspection, the Attorney General may contract with:

(a) Any sheriff’s department;
(b) Any police department; or
(c) Any other person who will, in the opinion of the Attorney General, perform the inspection in a fair and impartial manner.

2. If the inspector desires to enlist the assistance of a child under the age of 18 for such an inspection, the inspector shall obtain the written consent of the child’s parent for such assistance.

3. A child assisting in an inspection pursuant to this section shall, if questioned about his or her age, state his or her true age and that he or she is under 18 years of age.

4. If a child is assisting in an inspection pursuant to this section, the person supervising the inspection shall:

(a) Refrain from altering or attempting to alter the child’s appearance to make the child appear to be 18 years of age or older.

(b) Photograph the child immediately before the inspection is to occur and retain any photographs taken of the child pursuant to this paragraph.

5. The person supervising an inspection using the assistance of a child shall, within a reasonable time after the inspection is completed:

(a) Inform a representative of the business establishment from which the child attempted to purchase tobacco or products made *or*



derived from tobacco that an inspection has been performed and the results of that inspection.

(b) Prepare a report regarding the inspection. The report must include the following information:

(1) The name of the person who supervised the inspection and that person's position;

(2) The age and date of birth of the child who assisted in the inspection;

(3) The name and position of the person from whom the child attempted to purchase tobacco or products made *or derived* from tobacco;

(4) The name and address of the establishment at which the child attempted to purchase tobacco or products made *or derived* from tobacco;

(5) The date and time of the inspection; and

(6) The result of the inspection, including whether the inspection resulted in the sale, distribution or offering for sale of tobacco or products made *or derived* from tobacco to the child.

6. No civil or criminal action based upon an alleged violation of NRS 202.2493 or 202.2494 may be brought as a result of an inspection for compliance in which the assistance of a child has been enlisted unless the inspection has been conducted in accordance with the provisions of this section.

Sec. 17. Chapter 244 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A board of county commissioners may adopt an ordinance to establish an offense related to tobacco that may include provisions which prohibit a child who is under the age of 18 years from:

(a) Purchasing or attempting to purchase tobacco products;

(b) Possessing or attempting to possess tobacco products;

(c) Using tobacco products; or

(d) Falsely representing that he or she is 18 years of age or older to purchase, possess or obtain tobacco products.

2. An ordinance adopted pursuant to this section must provide that the provisions of the ordinance do not apply to a child who is under the age of 18 years and who is:

(a) Assisting in an inspection pursuant to NRS 202.2496;

(b) Handling or transporting tobacco products in the course of his or her lawful employment;

(c) Handling or transporting tobacco products in the presence of his or her parent, spouse or legal guardian who is 18 years of age or older; or



(d) Possessing or using tobacco products for an established religious purpose.

3. As used in this section, “tobacco products” means cigarettes, cigarette paper, tobacco of any description or products made or derived from tobacco. As used in this subsection, the term “products made or derived from tobacco” does not include any product regulated by the United States Food and Drug Administration pursuant to Chapter V of the Federal Food, Drug, and Cosmetics Act, 21 U.S.C. §§ 351 et seq.

